

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re the Marriage of GERALD L.
and JOYCE ANN GIBESON.

GERALD L. GIBESON,

Appellant,

v.

JOYCE ANN GIBESON,

Respondent.

C060843

(Super. Ct. No. 152739)

This is an appeal from a judgment following a court trial in a family law case. There is no reporter's transcript of the trial and no statement of decision. The trial court later issued a judgment, addressing specific issues, from which the appeal was taken.

We conclude all of the issues raised by appellant Gerald L. Gibeson's briefing have been forfeited on appeal.

Appellant heads the following issues on appeal:

1. "Trial Court Committed Reversible Error in Ordering a Refinance of the Family Home and Yet Making That Impossible by

Doubling Support.” There is no citation to pertinent legal authority, except for a citation to the maxim that “The law never requires impossibilities.” (Civ. Code, § 3531.) This is a fact-based argument, but there are no record citations to support it and no trial record. Without knowing the evidence, we cannot say whether the orders the trial court made were impossible to execute.

2. “The Court’s Ruling on Credit for Payments on the Family Home Results in a Double Recovery and must Be Reversed.” This argument refers to a legal ruling purportedly made during trial and also relies on testimony purportedly given at trial. There is not a single record citation. Also, there is no citation to any legal authority.

3. “The Court’s Ruling on Reasonable Rental Value and the Amount Appellant Owed Respondent Is Error.” This claim relies on facts purportedly shown at trial, and rulings made by the trial court, without any record citations.

4. “The Ruling on Permanent Spousal Support Was Not Supported and must Be Reversed.” This argument cites the trial court’s *memorandum of decision*, but then argues about the existence or nonexistence of facts, and refers to evidence purportedly adduced at trial, without citations.

5. “The Court’s Ruling on the Note Payment from the Son Is Now Moot.” This argument refers to evidence at trial, without citation to the record and also refers to matters that purportedly took place *after* the trial, which are not in the

record. We previously denied appellant's motion for production of additional evidence on appeal.

An appellate contention will be deemed forfeited unless it is supported by citations to the record and accompanied by coherent legal analysis and authority. (See *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856 [lack of citations to record to support claim]; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3 [lack of legal analysis or authority].)¹

Because each issue in the opening brief violates these elementary principles, we conclude all of the issues have been forfeited for defective presentation.

Moreover, as indicated above, the claims appear to be fact-based. However, this is a judgment roll appeal: "On such an appeal, '[t]he question of the sufficiency of the evidence to support the findings is not open. Unless reversible error appears on the face of the record, an appellate court is confined to a determination as to whether the complaint states a cause of action, whether the findings are within the issues, and whether the judgment is supported by the findings.'" (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083, fn. omitted; see *Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.)

¹ Further, an appellant may not incorporate by reference points made in papers filed in the trial court in lieu of briefing the points on appeal. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334.)

At oral argument, appellant suggested he was entitled to a hearing on his new trial motion. However, appellant failed to head and argue this as a contention of error in the opening brief, and although respondent addressed it generally, and the point is discussed in the reply brief, that discussion comes too late and fails to provide cogent legal analysis or discussion of prejudice, and therefore is forfeited. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408 [rule requiring headings “‘designed to lighten the labors of the appellate tribunals’”]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 102 [issue in reply brief “too late”], 106 [party must discuss prejudice].)

“A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) To avoid this presumption, a party must obtain a *statement of decision*. (*Id.* at pp. 1133-1134.) Contrary to appellant’s evident view, the trial court’s “Memorandum of Decision” is not a substitute for a *statement of decision*. (See *In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 645-649.) Thus, appellant’s challenges are also forfeited for lack of an adequate record.²

² Further, to the extent any of appellant’s claims could otherwise have been presented as purely legal claims, “legal issues arise out of facts, and a party cannot ignore the facts in order to raise an academic legal argument. “[A]ppellate counsel should be vigilant in providing us with effective assistance in ferreting out all of the operative facts that affect the resolution of issues tendered on appeal.” (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278,

Accordingly, we find each of appellant's claims to be forfeited, and we decline to address them on the merits.

DISPOSITION

The judgment is affirmed. Appellant shall pay respondent's costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

ROBIE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.

291.) Because we have no coherent statement of facts, due to the absence of a trial record, we would have no factual background to assess any purportedly purely legal claims.